

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

On December 13, 2021, respondent filed a status report indicating that he intended to defend the case and proposed deadlines to submit his Rule 4(c) report. Respondent's ("Resp.") Status Report ("Rept.") (ECF No. 29). Respondent submitted the Rule 4(c) report on January 12, 2022, stating that the Division of Injury Compensation Programs at the Department of Health and Human Services reviewed petitioner's case and it was their opinion that their case "is not appropriate for compensation." Resp. Rept. at 2.

The same day I ordered petitioner to file an expert report and remaining medical records. Scheduling Order, NON-PDF, January 12, 2022 (ECF No. 31). Petitioner filed one updated medical record on February 11, 2022. Pet. Ex. 5 (ECF No. 32). Afterwards, petitioner filed four unopposed motions for extension of time to file an expert report. *See* Pet.'s Motions for Extensions of Time (ECF Nos. 34, 35, 36).

On November 14, 2022, petitioner filed a motion for a decision dismissing the petition. Pet. Motion ("Mot."). Petitioner understands "that a decision by the Special Master dismissing her petition will result in judgment against her. *Id.* at 1. Further, petitioner has been advised that such judgment will end all of her rights in the Vaccine Program." *Id.* Additionally, petitioner understands that she may apply for attorneys' fees and costs once her case is dismissed and that respondent reserves the right, pursuant to 42 U.S.C. § 300aa-15(e) to question good faith and reasonable basis of her claim. *Id.* Petitioner states that she "does intend to protect her rights to file a civil action in the future. Therefore, pursuant to 42 U.S.C. § 300aa-12(a)(2), she intends to reject the Vaccine Program judgment against her and elect to file a civil action." *Id.* at 2.

To receive compensation in the Vaccine Program, petitioners have the burden of proving either: (1) that the vaccinee suffered a "Table Injury," i.e., an injury beginning within a specified period of time following receipt of a corresponding vaccine listed on the Vaccine Injury Table or (2) that the vaccinee suffered an injury that was caused-in-fact by a covered vaccine. §§13(a)(1)(A); 11(c)(1). Here, petitioner is not alleging a Table Injury, and therefore, must demonstrate that the covered vaccine she received caused A.B.'s alleged vaccine-related injury. To satisfy her burden of proving causation in fact, petitioner must show by preponderant evidence: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." *Althen v. Sec'y of Health & Human Servs.*, 418 F.3d 1274, 1278 (Fed. Cir. 2005). Under the Act, petitioners may not be given a Program award based on the petitioners' claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 13(a)(1). In this case, petitioner did not offer an opinion from a medical expert to support vaccine causation. Thus, the information in the record is insufficient to justify an award of compensation. Accordingly, in light of petitioner's motion for a decision dismissing her petition, a further investigation is unwarranted. As such, the petition is hereby **DISMISSED**.

Petitioner's Motion for Decision Dismissing the petition is **GRANTED** and the petition is hereby **DISMISSED**. **The Clerk of the Court shall enter judgment accordingly.**<sup>3</sup>

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<sup>3</sup> Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

**IT IS SO ORDERED.**

**s/Thomas L. Gowen**

Thomas L. Gowen  
Special Master